

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 857 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-
and
Hon'ble MR.JUSTICE H.K.RATHOD sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No :

NEW INDIA ASSURANCE CO LTD.

Versus

HIMAT NARAN MARAJ

Appearance:

MS LILU K BHAYA for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 07/08/2000

ORAL JUDGEMENT

(Per : D. C. Srivastava, J.)

1. This is an Appeal against interim Award dated 16.3.2000 rendered by Motor Accident Claims Tribunal, Kutch at Bhuj, awarding compensation of Rs.2,59,400/- together with interest at the rate of 12 % p.a. and proportionate costs.

2. With consent of the learned Counsel for the appellant Ms.L.K.Bhaya and Shri M.S.Shah for the respondent, it is proposed to dispose of this Appeal finally at the admission stage.

3. It is undisputed that a petition u/s. 166 of the Motor Vehicles Act is pending before the Tribunal. Shri M.S.Shah, learned Counsel for the respondent admits this pendency. Number of contentions have been raised by the learned Counsel for the appellant. The first contention is that the Tribunal has abruptly calculated monthly income of the deceased at Rs.2000/- without any reliable evidence. She also contended that the Tribunal was apparently in error in awarding compensation for loss of income for 52 weeks in case of a labourer and for this there was no justification. Another contention is regarding age of the victim and also the extent of disability. It may be mentioned that all these points, except the income and loss of income for 52 weeks, have been kept open by the Tribunal at Page : 10 of its Award where it is observed that both the parties will be at liberty to adduce evidence in respect of the age, income and the disability at the time of decision of application under Section 166 of the Motor Vehicles Act. In addition to this, we are permitting the appellant to raise the dispute regarding actual income of the victim or likely income of the victim and also whether the victim is entitled to loss of income for 52 weeks as has been awarded by the Tribunal in reply to the petition u/s. 166 of the Motor Vehicles Act before the Tribunal.

4. With this observation and after going through the interim Award we do not find it expedient at this stage to interfere with the same. Consequently the Appeal is dismissed with permission to the appellant to raise the disputes before the Tribunal in a pending petition u/s. 166 of the Motor Vehicles Act. The amount awarded by the Tribunal together with proportionate cost and interest shall be deposited by the appellant within six weeks from today. The amount of Rs.25,000/- deposited in this Court shall be remitted to the Tribunal forthwith. The amount so deposited shall be disbursed in the light of directions given by the Tribunal in the impugned Award.

5. The claimants - respondents are directed to furnish undertaking before the Tribunal within a period of three weeks from today that they shall prosecute the application under Section 166 of the Motor Vehicles act on merits and shall not withdraw the same nor get the same dismissed in default. No order as to cost in this Appeal.

sd/-

(D. C. Srivastava, J.)

Date : August 07, 2000 sd/-

(H. K. Rathod, J.)

sas